No. 4307

United States
Circuit Court of Appeals
For the Ninth Circuit

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J. AL PATTISON,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Brief of Plaintiff in Error

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STATEMENT

The defendant, J. Al Pattison, was indicted jointly with one Jerome Mann, under Section 9772 U. S. Compiled Statutes (5209 Revise Statutes, Act of September 26, 1918), which reads in part as follows:

> "Any officer, director, agent or employe of any Federal Reserve Bank or of any member bank as defined in the Act of December 23, 1913, known as the Federal Reserve Act, who . . .

> wilfully misapplies any of the moneys, etc., of such Federal Reserve Bank or member bank . . . with intent in any case to injure or defraud such Federal Reserve Bank or member bank or any other corporate body politic or corporate, or aany individual person, or to deceive any officer of such Federal Reserve Bank or member bank, or the comptroller of the currency or any agent or examiner appointed to examine the affairs of such Federal Reserve Bank or member bank or Federal Reserve Board . . . and every person who with like intent aids or abets any officer, director, agent, employe . . . in violation of this section, shall be deemed guilty of a misdemeanor and upon conviction thereof in any District Court of the United States shall be fined not more than $5000.00, or shall be imprisoned not more than five (5) years or both, in the discretion of the court."

Prior to the trial of Mann, the defendant, Pattison, entered a plea of guilty, whereupon he was fined $500.00.

Thereafter the defendant, Mann, was tried and acquitted, and based upon such acquittal, Pattison, through his attorneys, applied to the court for an order remitting the fine, urging in support thereof that Mann's guilt of the crime charged must first be proved before there could be any conviction of Pattison as an accessory, and further that the acquittal

of Mann was in effect a finding that the crime charged had not been committed. The crime charged was that Mann had misapplied funds of the First National Bank of Linnton, Linnton, Oregon, and that Pattison had aided and abettted in such misapplication.

On April 7, 1924, after hearing argument of counsel, the Honorable R. S. Bean, ruled that said application would have to be denied, stating:

> "This case was submitted on an application for the remission of a fine imposed upon the defendant by the court some months ago.
>
> Pattison was indicted for aiding and assisting one Mann to violate the National Banking Act. The indictment charged Mann as the principal and Pattison as aiding and assisting. Pattison entered a plea of guilty and was fined five hundred dollars. Later Mann was tried and acquitted and it is now insisted that inasmuch as Mann was acquitted Pattison could not have been guilty of aiding and assisting him to commit a crime of which he was subsequently found not guilty, but it appears from the record that Pattison's plea of guilty was entered before Mann's trial, and necessarily was an admission of every material allegation in the indictment, and among the material allegations was the charge that Mann had unlawfully misapplied the bank's

funds, and that Pattison had aided and assisted him in doing so. As the record thus stood, Pattison was unquestionably guilty. He entered a plea of that kind. If he had been tried, it would have been necessary for the government to prove that Mann was guilty and that Pattison aided and assisted him to commit the crime. Now the fact that after that Mann was tried and acquitted does not, in my judgment, affect Pattison's guilt, because there may have been many reasons why Mann was acquitted when he came to trial. It may have been failure of proof; it may have been the failure of the government to prove material allegations of the indictment; it may have been on the ground of venue, or there may have been many other reasons, so I conclude the motion is not well taken.

The defendant relies mainly upon the case of United States vs. Pyle, decided by the District Court in Los Angeles. In that case Pyle and Connor were jointly indicted and jointly tried. The principal was acquitted but the jury found that the defendant, who was charged with aiding and assisting guilty, and upon a motion for a new trial, the court set the judgment aside, and very properly, because the case was submitteed on the evidence and the jury could not consistently have found the defendant guilty of aiding and assisting a man whom they found, on the same testimony, to be not guilty. But that case has no bear-

ing on the question now before us, and for these reasons the motion will be overruled."

POINTS AND AUTHORITIES

I.

The abstraction or misapplication of funds of a national bank is an offense which under Section 9772 U. S. Compiled Statutes (5209 Revise Statutes), can only be committed by an officer or attache of a national bank.

U. S. vs. Pyle, 279 Fed. 290-92.

II.

Before one who is charged as an aider or abettor in the misapplication of funds of a national bank can be deemed guilty as such, it is incumbent upon the government to first establish the guilt of the principal.

U. S. vs. Pyle, 279 Fed. 290-92.

Coffin vs. U. S., 162 U. S. 664.

III.

A plea of guilty by one charged as an aider or abettor in the misapplication of funds of a national bank does not establish the guilt of the principal and as such offense can only be committed by an officer or attache of the bank, an acquittal of such officer or at-

tache renders the statute and indictment thereunder wholly inoperative as against such accessory, notwithstanding his plea of guilty.

U. S. vs. Pyle, 279 Fed. 290.

ARGUMENT

On this appeal plaintiff relies upon the decision of Judge Bledsoe in the case of United States vs. Pyle, et al, reported in 279 Fed. 290. In that case, Conner, the accessory, was tried with Pyle, the principal, and found guilty, whereas Pyle was acquitted. In considering whether the verdict would stand against Conner, that court stated:

> "There is no general statute to which my attention has been directed making it a federal offense to commit a larceny or pilfering of the assets of a national bank. Neither is there any general statute giving to federal courts the jurisdiction to punish the obtaining of the property of a national bank through fraudulent representations. Such matters are left to the concern and disposition of the various state governments, which in the exercise of their respective sovereignties enact and enforce general laws intended to preserve the peace, good order and rights of property of society in general. I am persuaded, therefore, that the aim and intent of this statute, in creating a federal offense, was to make

it an offense cognizable by the federal courts only in the event that the abstraction or misapplication of the funds of a national bank should be committed by an officer or attache thereof.

In that event, therefore, there is no crime committed under the statute, unless the act charged be committed by one of the specific persons named in the statute, that is, by one of the officers or attaches of the bank; and in order further to protect the bank, but purely as incidental to the main purpose and intention of the statute, if such officer of the bank be aided and abetted by another, one on the outside, or even by another bank official, that other, under the statute, will also be subject to punishment as for such aiding and abetting. In this wise, irrespective of the things actually done or the results actually brought about, if there has been no crime committed by the officer of the bank, there is no crime known to the federal law committed by one not connected with the bank. In other words, there can be no incident without the principal; there can be no aiding and abetting with respect to the misapplication of the funds of a national bank, of which this court under this statute has jurisdiction, if there has been no misapplication by an officer of the bank.

In this case the charge was that Conner aided and abetted Pyle, an officer of the bank, in mis-

> applying its funds. The jury have acquitted Pyle, which is a legal demonstration of his innocence of the crime charged. It is a conclusive determination that there was no misapplication by him of the funds of the bank with intent to defraud. That being so, there was no crime under this statute which Conner could or did aid and abet; and in that wise the determination of the innocence of Pyle determines the non-existence of any crime subject to the jurisdiction of this court committed by Conner."

On behalf of the Defendant in Error, it is contended that the above quoted decision is not in point for the reason that Pattison prior to Mann's trial admitted every material allegation contained in the indictment which included the charge that Mann with intent to defraud had misapplied the bank's funds, and that he, Pattison, had aided and abetted therein. That is but another way of saying that Pattison's admission of Mann's guilt is final and conclusive of such question irrespective of the fact that the jury after hearing the evidence concluded to the contrary. If the guilt of the principal was a prerequisite to the conviction of Pattison (and it is conceded that such is the force and effect to be given the statute in question), Mann's acquittal should be an absolute bar to any judgment against Pattison, notwithstanding his plea of guilty. To conclude otherwise requires the court to accept such plea in lieu of a judicial finding to the contrary.

The guilt or innocence of Mann may have had nothing whatever to do with Pattison's plea of guilty. Such plea may have been prompted by motives entirely foreign to any such question. We have just as much right to speculate as to the reasons or motives prompting Pattison's plea of guilty as the trial court had to speculate on the motive or reasons prompting the jury to acquit Mann.

Under the authority above quoted from, we do not believe it is permissible to ignore the verdict of the jury in this case. After a full and complete hearing its verdict was that the defendant, Mann as principal, had not misapplied the funds of the bank in question. Under the construction placed upon the statute pursuant to which Pattison was indicted, he would be incapable of committing the crime charged therein. He was not an officer or an attache of the bank in question and the crime charged could not have been committed by him alone. There appears to be no legal support for the judgment against Pattison and the fine imposed by virtue thereof should be remitted.

Respectfully submitted,

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JOHN G. BECKMAN,

Attorneys for Plaintiff in Error.